



Department of Defense DIRECTIVE

NUMBER 2040.3

November 14, 1991

DA&M

SUBJECT: End Use Certificates (EUCs)

Reference: (a) Deputy Secretary of Defense Memorandum, "End Use Certificates,"
April 9, 1991 (hereby canceled)

1. PURPOSE

This Directive:

- 1.1. Supersedes the referenced memorandum.
- 1.2. Establishes policies, assigns responsibilities, and prescribes procedures for signing EUCs on foreign defense items.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

3. DEFINITIONS

3.1. End Use Certificate (EUC). For the purposes of this Directive, a written agreement in connection with the transfer of military equipment or technical data to the United States that restricts the use or transfer of that item by the United States.

3.2. Use for Defense Purposes. Includes direct use by or for the U.S.

Government in any part of the world and transfer by means of grant aid, International Military Education and Training (IMET) programs, Foreign Military Sales (FMS), and other security assistance and armaments cooperation authorities.

4. BACKGROUND AND POLICY

This Directive is intended to authorize the execution of EUCs when such a certificate is necessary to facilitate purchases of foreign products when the purchase of such products is in the best interest of the United States.

4.1. The Military Departments and other DoD Components purchase products produced by allies and friendly countries and participate in cooperative development programs to promote interoperability, standardization, and an expanded procurement base, and to obtain products that best meet U.S. needs at the lowest cost.

4.2. U.S. worldwide security responsibilities are extensive and recognition of these special circumstances has resulted in long-time acceptance in international agreements, by allies and friends, of the need for flexibility in the authorized uses or transfer of purchased or co-developed articles and data. In various circumstances, international agreements have recognized that permissible use of an item or data for U.S. "defense purposes" as defined in 3.2., above.

4.3. Consistent with 4.1. and 4.2., above, DoD Components may sign EUCs, in accordance with the policy and procedures outlined below. While most EUCs requested by foreign governments use general language, their effects may be divided into three categories, as described below. Authority to approve their execution is limited as follows:

4.3.1. Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize EUCs:

4.3.1.1. For acquisition of items classified for security purposes by a foreign government,

4.3.1.2. For the acquisition of items covered by the nonproliferation agreements to which the United States is a party, such as missile technology, or

4.3.1.3. That permit the item to be "used for defense purposes" as defined in subsection 3.2., above, by the United States.

4.3.2. Category II. EUCs that are not Category I or III are Category II. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category II EUCs only after a determination is made through the coordination procedures set forth in subsection 6.1.2., below, that, notwithstanding the use or transfer limitations, the purchase is in the U.S. national interest. The least restrictive provisions possible should be negotiated

4.3.3. Category III. Secretaries of Military Departments and Directors of Defense Agencies may not authorize the signature of EUCs that limit the right:

4.3.3.1. For use by or for the U.S. Government in any part of the world,
or

4.3.3.2. To provide the item to allies engaged together with the United States in armed conflict with a common enemy.

Waivers to this prohibition may be granted by the Under Secretary of Defense (Acquisition) (USD(A)). Procedures for requesting such waivers are at subsection 6.1.3., below.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense (Acquisition) shall:

5.1.1. Monitor compliance with this Directive.

5.1.2. Develop procedures to ensure timely review of Category II and III items with the Under Secretary of Defense for Policy (USD(P)).

5.1.3. Upon obtaining the concurrence of the USD(P), waive the restrictions in subsection 4.3.3. of this Directive when purchase of the item is in the national interest.

5.1.4. When requested, and in coordination with the USD(P), assist the Military Departments and Defense Agencies in negotiating the elimination or amelioration of an EUC's restrictive language.

5.2. The Under Secretary of Defense for Policy shall:

5.2.1. Consult with the USD(A) on waivers authorized by this Directive and,

if appropriate, coordinate with the Department of State.

5.2.2. When requested, and in coordination with the USD(A), assist the Military Departments and Defense Agencies in negotiating the elimination or amelioration of the EUC's restrictive language.

5.2.3. Develop procedures for coordination and review of EUCs internally and with the Department of State.

5.2.4. Establish, with the concurrence of the USD(A), specific acceptable end use restrictions in addition to those set forth in Category I, which shall be added immediately to Category I and a corresponding administrative change made to subsection 4.3.1. of this Directive.

5.3. The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

5.3.1. Authorize the execution of Category I and II EUCs in accordance with the procedures outlined in section 6., below. This responsibility may not be delegated by the Directors of Defense Agencies; it may be delegated by Secretaries of the Military Departments to civilian officers of their respective departments appointed by the President with the advice and consent of the Senate. Once EUC execution is authorized, the Director of a Defense Agency, or Military Department civilian official who has been delegated authorization authority may delegate the authority to sign individual EUCs.

5.3.2. Establish procedures to ensure compliance with this Directive. These procedures should ensure compliance, for the life of the purchased item, with the transfer or use restrictions agreed to in signing an EUC. They should also ensure 21-calendar day notification to USD(A) before authorizing the execution of a Category II EUC.

6. PROCEDURES

6.1. Procedures for the three categories of EUCs established in subsection 4.3., above, are:

6.1.1. Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category I EUCs.

6.1.2. Category II. Not less than 21 calendar days before authorizing the execution of a Category II EUC, Military Departments and Defense Agencies shall provide notification to the USD(A). The notification will contain a description of the item and the limitations to be imposed by the exporting government. The USD(A) shall coordinate with the USD(P), providing at least 1-days for review. If appropriate, the USD(P) shall coordinate with the Department of State. The USD(A) shall notify the submitting DoD Component of any further action required before final authorization of the EUC; otherwise, concurrence may be assumed after expiration of the 21-day period.

6.1.3. Category III. To acquire an item requiring a Category III EUC, the Secretary of a Military Department or Director of a Defense Agency must request a waiver from the USD(A). Requests for waivers should specify:

6.1.3.1. Why it is in the interest of the U.S. Government to procure the item.

6.1.3.2. The limitations to be imposed by the exporting government and a justification for acceptance of those limitations by the U.S. Government.

6.1.3.3. A statement that no satisfactory alternative to the item, considering cost, schedule, or operational requirements, is available from domestic or foreign sources without equivalent limitations.

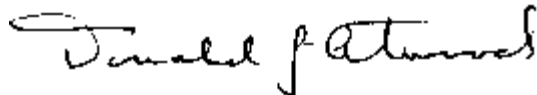
The USD(A) shall coordinate the waiver with the USD(P), who, if appropriate, shall then coordinate with the Department of State. USD(A) shall notify the submitting DoD Component of the results.

6.2. Copies of signed EUCs of all three categories shall be provided promptly to USD(A).

6.3. A record of any waivers or modifications of this policy shall be maintained by the USD(A).

7. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. The Military Departments and affected Defense Agencies shall forward copies of implementing documents to the Under Secretary of Defense (Acquisition) within 120 days.

A handwritten signature in black ink, appearing to read "Donald J. Atwood". The signature is fluid and cursive, with a large initial "D" and "A".

Donald J. Atwood
Deputy Secretary of Defense